

Exhibit 2

ZACHARY NYE, PH.D. - 02/02/2018

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 -----x

4 GARY KOOPMAN, TIMOTHY KIDD and

5 VICTOR PIRNIK, Individually and on

6 Behalf of All Others Similarly

7 Situated,

8 Plaintiffs,

9 v.

15-cv-7199 (JMF)

10 FIAT CHRYSLER AUTOMOBILES N.V.,

11 SERGIO MARCHIONNE, RICHARD K.

12 PALMER, and SCOTT KUNSELMAN

13 Defendants.

14 -----x

15 February 2, 2018

16 10:00 a.m.

17

18 Videotaped Deposition of ZACHARY NYE,

19 Ph.D., taken by Defendants, at the offices of

20 SULLIVAN & CROMWELL LLP, 125 Broad Street, New

21 York, New York, before Frank J. Bas, a

22 Registered Professional Reporter, Certified

23 Realtime Reporter and Notary Public within and

24 for the State of New York.

25

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2

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15 ALSO PRESENT:

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17

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25

1 ZACHARY NYE, Ph.D.

2 vigorously argue that these findings are the 10:25:30
3 product of improper econometric tests and that 10:25:33
4 these are spurious observations. 10:25:36

5 And there's a debate. It's not 10:25:39
6 100 percent determined who is right or wrong. 10:25:41
7 Long-term, you know, as more data comes in, 10:25:44
8 that should be -- become more clear. 10:25:46

9 But these are also very 10:25:50
10 long-term findings. These are not 10:25:52
11 contradicting the event studies using short 10:25:57
12 windows, which is akin to what we use -- it is 10:26:01
13 what we use, when what I've done here in this 10:26:03
14 event study for my report and what I've done 10:26:06
15 for many other cases. 10:26:08

16 And the academic literature on 10:26:11
17 that front is that stock prices do react 10:26:13
18 significantly or at least appropriately to the 10:26:18
19 release of information. In short windows. 10:26:23

20 Q. Let's turn to page 24. And 10:26:29
21 if you see on the bottom paragraph you write 10:26:47
22 (as read): 10:26:50

23 For all of the data series, the 10:26:50
24 responses of the Yosemite prices to 10:26:52
25 lagged information is statistically 10:26:54

1 ZACHARY NYE, Ph.D.

2 insignificant the 95% level.

10:26:56

3 Do you see that?

10:26:59

4 A. I do.

10:27:00

5 Q. Why do you refer to the

10:27:00

6 95 percent level? What do you mean by that?

10:27:02

7 A. Oh, that's -- so that's a

10:27:04

8 common level of -- a confidence level that is

10:27:07

9 routinely used to convey statistical

10:27:11

10 significance. However, it is not the only

10:27:14

11 confidence level used to convey statistical

10:27:18

12 significance, and there are many articles and

10:27:20

13 many authors that have used confidence levels

10:27:24

14 at the 90 percent level to convey statistical

10:27:26

15 significance.

10:27:28

16 There are also many authors

10:27:29

17 that have opined that economic effects can be

10:27:30

18 significant at even lower confidence levels.

10:27:34

19 And that's pervasive, I believe, in the

10:27:37

20 economics, accounting and finance literature.

10:27:41

21 Q. In your academic work here you

10:27:44

22 refer to the 95 percent confidence level,

10:27:45

23 right?

10:27:47

24 A. I do.

10:27:48

25 Q. Have you ever taught any

10:27:51

1 ZACHARY NYE, Ph.D.

2 of market industry effects. I have that 10:50:16
3 in one of my exhibits. But I haven't gone 10:50:18
4 in and analyzed the informational impact on 10:50:21
5 those dates. 10:50:29

6 Q. So it sounded like, from what 10:50:30
7 you said before, you had gone through the 10:50:33
8 complaint and tried to identify the corrective 10:50:35
9 disclosures to include in your study, is that 10:50:38
10 right? 10:50:40

11 A. Yeah, the corrective events. 10:50:40

12 Q. Did you conduct that same 10:50:42
13 analysis for the alleged misstatements in the 10:50:44
14 complaint? 10:50:48

15 A. No, I did not. And I think it 10:50:48
16 wouldn't be particularly useful because this 10:50:50
17 is -- my understanding is that this is a price 10:50:53
18 maintenance case, so you shouldn't expect to 10:50:56
19 see significant price movements because 10:50:59
20 they -- it's more likely they didn't tell the 10:51:02
21 truth as opposed to lying about something 10:51:04
22 positive that didn't really exist. 10:51:06

23 Q. And what's your basis for this 10:51:08
24 being a price maintenance case? 10:51:10

25 A. From reading the complaint. 10:51:11

1 ZACHARY NYE, Ph.D.

2 Also just knowing the general -- it is 10:51:13
3 obviously a price maintenance case, in my 10:51:15
4 economic opinion. 10:51:18

5 Q. And what's the basis for that 10:51:19
6 opinion? 10:51:22

7 A. Knowing the allegations and 10:51:22
8 knowing what information affects stock prices 10:51:27
9 and what doesn't impact stock prices, and in 10:51:30
10 my opinion these misstatements shouldn't have 10:51:33
11 been expected to impact the stock price. 10:51:37

12 Q. So you would not expect any of 10:51:39
13 the alleged misstatements to have any effect 10:51:41
14 on FCA stock price? 10:51:44

15 A. Yeah, I would be surprised if 10:51:46
16 they did. I can't recall all the misstatement 10:51:47
17 dates. And if they moved it might be because 10:51:50
18 of confounding information unrelated to the 10:51:52
19 alleged misstatements. Because I do remember 10:51:55
20 there's a lot of earnings releases that 10:51:57
21 coincided with the alleged misstatements. 10:52:01

22 But no, yeah, the alleged 10:52:04
23 misstatements themselves were not saying that 10:52:06
24 they were non-compliant. So the market 10:52:08
25 assumed they were compliant, is my 10:52:10

1 ZACHARY NYE, Ph.D.

2 understanding, such that you wouldn't expect 10:52:13

3 to see a price movement when they say, hey, 10:52:14

4 we're compliant. 10:52:17

5 Q. Let's turn to the complaint, 10:52:18

6 page 78. 10:53:02

7 A. Did you say 78? 10:53:04

8 Q. Yes. Do you have that in front 10:53:05

9 of you? 10:53:06

10 A. I do. 10:53:07

11 Q. And do you see there's a 10:53:07

12 section entitled "Material False and 10:53:09

13 Misleading Statements Issued During the Class 10:53:11

14 Period"? Do you see that? 10:53:12

15 A. I do. 10:53:13

16 Q. And as we discussed earlier, 10:53:13

17 you didn't review these statements or include 10:53:16

18 them in your study? 10:53:18

19 A. I've reviewed the statements 10:53:19

20 but I didn't -- they're not in my exhibit 15. 10:53:22

21 Q. And if we turn to 10:53:27

22 paragraph 280. It states that (as read): 10:53:40

23 On November 26, 2014 Chrysler 10:53:42

24 filed a Form F-1/A with the SEC. 10:53:45

25 Do you see that? 10:53:48

1 ZACHARY NYE, Ph.D.

2 A. I do.

10:53:49

3 Q. And then in the next paragraph,
4 281, it includes some statements from that
5 Form F-1/A, including, about two-thirds of the
6 way down (as read):

10:53:49

10:53:51

10:53:53

10:53:56

7 We are substantially in
8 compliance with the relevant global
9 regulatory requirements affecting our
10 facilities and products.

10:53:57

10:53:58

10:54:00

10:54:01

11 Do you see that?

10:54:02

12 A. I do.

10:54:03

13 Q. And you hadn't conducted any
14 analysis of press or earnings --

10:54:04

10:54:09

15 MR. LEVY: Withdrawn.

10:54:13

16 BY MR. LEVY:

10:54:14

17 Q. You haven't conducted any
18 analysis of press or analyst reports related
19 to that disclosure?

10:54:14

10:54:15

10:54:18

20 MR. LIEBERMAN: Objection to
21 form.

10:54:26

10:54:27

22 Go ahead.

10:54:27

23 A. I don't -- no, that's not an
24 event date in my exhibit 15.

10:54:28

10:54:30

25 So we've calculated the return,

10:54:32

1 ZACHARY NYE, Ph.D.

2 the -- on the impact data associated with 10:54:36
3 this, but I haven't gone in detail and 10:54:38
4 looked at every analyst report, and if there 10:54:40
5 exists any. 10:54:43

6 I certainly have all of the 10:54:43
7 analyst reports that I can get my hands on, 10:54:44
8 and it may well be that there are no analyst 10:54:47
9 reports related to this because this is a 10:54:49
10 Form F-1/A, which isn't the -- usually the 10:54:51
11 most covered of the SEC forms, and I don't 10:54:56
12 know of any news at the moment either. 10:55:02

13 But in short, in summary, it's 10:55:06
14 not examined in my exhibit 15, my event study. 10:55:08

15 Q. I guess keeping the complaint 10:55:12
16 in front of you, if you want to pull up 10:55:15
17 exhibit 14B in your report. 10:55:17

18 A. Sure. Go to this date? 10:55:20

19 Q. Yes. If you can look to 10:55:38
20 November 26, 2014. It's about two-thirds 10:55:39
21 of the way down the page. Halfway. Do you 10:55:41
22 see it? 10:55:43

23 A. I do see it. 10:55:46

24 Q. And your regression results 10:56:03
25 show that there was no statistically 10:56:07

1 ZACHARY NYE, Ph.D.

2 significant impact on FCA's stock price on the 10:56:09
3 date of this alleged misstatement, is that 10:56:11
4 right? 10:56:16

5 A. Yeah, I mean, I don't know the 10:56:16
6 timing, whether it was before or after market 10:56:17
7 close or during the market hours of the 10:56:19
8 filing, but it doesn't really matter because 10:56:21
9 there's no significant return in the 10:56:22
10 surrounding days either. So there's no 10:56:27
11 significant return associated with this 10:56:29
12 filing. 10:56:30

13 Q. Let's turn to paragraph 294 of 10:56:33
14 the complaint. 10:56:41

15 A. I'm there. 10:56:57

16 Q. Do you see it states (as read): 10:56:59
17 On March 5, 2015 Chrysler 10:57:00
18 issued a press release and filed 10:57:03
19 an annual report on Form 20-F with 10:57:04
20 the SEC. 10:57:06

21 Do you see that? 10:57:07

22 A. Yes. 10:57:12

23 Q. And then turning to paragraph 10:57:14
24 302 do you see that according to the complaint 10:57:17
25 this Form 20-F also contained the language 10:57:26

1 ZACHARY NYE, Ph.D.

2 that (as read):

10:57:29

3 We are substantially in

10:57:30

4 compliance with the relevant global

10:57:31

5 regulatory requirements affecting our

10:57:34

6 facilities and products.

10:57:35

7 Do you see that?

10:57:36

8 A. I do.

10:57:36

9 Q. And turning back then to

10:57:37

10 exhibit 14B of your report.

10:57:43

11 A. Okay.

10:57:46

12 Q. If you can find that date.

10:57:46

13 It's on page 2.

10:57:48

14 A. I'm sorry. March 5?

10:58:03

15 Q. Yeah, March 5, 2015.

10:58:04

16 A. March 5, 2015. Okay. I'm

10:58:11

17 there.

10:58:14

18 Q. And do you agree that there is

10:58:14

19 no statistically significant effect on FCA

10:58:17

20 stock price on that day or the surrounding

10:58:20

21 days as a result of that alleged misstatement?

10:58:22

22 A. I agree.

10:58:24

23 Q. And did you review any press or

10:58:25

24 analyst coverage surrounding that Form 20-F?

10:58:27

25 A. I may have. I can't recall

10:58:31

1 ZACHARY NYE, Ph.D.

2 any.

10:58:32

3 Q. And are you aware of any of
4 that analysis discussing this "substantially
5 in compliance" statement?

10:58:33

10:58:35

10:58:39

6 A. I'm sorry?

10:58:40

7 Q. Of any press or analyst reports
8 that you reviewed surrounding this Form 20-F,
9 are you aware of any of it discussing this
10 "substantially in compliance" language from
11 the complaint?

10:58:41

10:58:49

10:58:52

10:58:55

10:58:56

12 MR. LIEBERMAN: Objection to
13 form.

10:58:56

10:58:58

14 A. I am not aware of any, or don't
15 recall any to the extent I reviewed any.

10:58:58

10:59:00

16 Q. Let's turn to -- back to the
17 complaint, paragraph 314.

10:59:03

10:59:13

18 A. Okay.

10:59:30

19 Q. It states that (as read):

10:59:31

20 On May 19 Chrysler also filed
21 a prospectus on Form F-4 with the SEC.

10:59:32

10:59:36

22 Do you see that?

10:59:39

23 A. I do.

10:59:39

24 Q. And further down in this
25 paragraph do you see this -- according to the

10:59:41

10:59:44

1 ZACHARY NYE, Ph.D.

2 complaint that this Form F-4 also contained 10:59:46

3 the same "substantially in compliance" 10:59:50

4 language? Do you see that? 10:59:52

5 A. Yeah, I do. 10:59:55

6 Q. And turning back to exhibit 10:59:57

7 14B, if we can find that date. I think it's 11:00:02

8 also on page 2. No, it's on page 3. Sorry. 11:00:04

9 A. All right. I have found it. 11:00:11

10 Q. And you agree that there was no 11:00:13

11 statistically significant impact on FCA's 11:00:15

12 stock price on the date of this alleged 11:00:17

13 misstatement or on the surrounding dates? 11:00:19

14 A. I agree. 11:00:21

15 Q. And did you review any press 11:00:23

16 or analyst coverage for the Form F-4 on 11:00:29

17 May 19, 2015? 11:00:34

18 A. I may have, but I am not -- I 11:00:35

19 can't recall any. 11:00:38

20 Q. Let's turn to -- back to the 11:00:38

21 complaint, paragraph 316. 11:00:45

22 A. Okay. 11:00:48

23 Q. It refers there, or it states 11:00:49

24 (as read): 11:00:57

25 On June 17, 2015, Chrysler 11:00:58

1 ZACHARY NYE, Ph.D.

2 issued a press release and filed with

11:00:59

3 the SEC a prospectus on Form 424B4.

11:01:00

4 Do you see that?

11:01:04

5 A. Yes.

11:01:05

6 Q. And then at the bottom of the

11:01:05

7 paragraph the complaint alleges that this SEC

11:01:07

8 filing stated (as read):

11:01:11

9 We are substantially in

11:01:12

10 compliance with the relevant global

11:01:13

11 regulatory requirements affecting our

11:01:15

12 facilities and products.

11:01:16

13 Do you see that?

11:01:17

14 A. I do.

11:01:18

15 Q. And turning back to exhibit 14B

11:01:19

16 of the report.

11:01:21

17 A. I'm there.

11:01:24

18 Q. If you can find that date, it's

11:01:24

19 also on page 3. Do you agree that on the date

11:01:26

20 of this alleged misstatement there was no

11:01:30

21 statistically significant impact on FCA's

11:01:32

22 stock price on this date or the surrounding

11:01:34

23 dates?

11:01:36

24 A. I agree.

11:01:36

25 Q. Did you review any press or

11:01:38

1 ZACHARY NYE, Ph.D.

2 analyst reports surrounding this SEC filing?

11:01:40

3 A. I may have. I can't recall any
4 that I reviewed.

11:01:43

11:01:49

5 Q. Let's look at some emission
6 statements now. Let's look at paragraph 343
7 of the complaint.

11:01:49

11:01:54

11:01:57

8 A. 343? Okay.

11:01:59

9 Q. And it refers to a January 27,
10 2016 earnings call. Do you see that?

11:02:09

11:02:12

11 A. I do.

11:02:14

12 Q. And if we look on the next
13 page, on the earnings call it's stated
14 that (as read):

11:02:15

11:02:22

11:02:27

15 I think we feel comfortable in
16 making the statement that there are no
17 defeat mechanisms or devices present
18 in our vehicles. And I think the cars
19 perform the same way on the road as
20 they do in the lab under the same
21 operating conditions. This is a
22 heightened concern.

11:02:27

11:02:28

11:02:30

11:02:32

11:02:34

11:02:36

11:02:39

11:02:40

23 Do you see that?

11:02:41

24 A. I do.

11:02:42

25 Q. So let's turn to exhibit 15 of

11:02:42

1 ZACHARY NYE, Ph.D.

2 your report now.

11:02:44

3 A. Okay.

11:02:47

4 Q. This earnings call is one of
5 the dates you looked at in your event study,
6 is that right?

11:02:47

11:02:55

11:02:57

7 A. That's correct.

11:02:58

8 Q. And your study showed that
9 there was no statistically significant impact
10 on FCA's stock price on the date of that call,
11 is that right?

11:02:59

11:03:02

11:03:04

11:03:07

12 A. That's right.

11:03:07

13 Well, let me just double-check
14 something real quick. (Pause.)

11:03:09

11:03:12

15 Yeah, the conference call was
16 in the morning, and there was no statistically
17 significant price change on January 27, 2016.

11:03:45

11:03:51

11:03:55

18 Q. Okay.

11:04:02

19 MR. LEVY: I think we can take
20 a short break.

11:04:03

11:04:04

21 THE WITNESS: Okay.

11:04:04

22 THE VIDEOGRAPHER: Just watch
23 your mics when you get up, please.

11:04:05

11:04:08

24 The time is approximately

11:04:13

25 11:04. We are going off the record.

11:04:15

1 ZACHARY NYE, Ph.D.

2 no mention of defeat devices that I can at 11:24:03
3 least remember from the analyst reports or 11:24:07
4 the -- um -- news articles on this date. 11:24:09

5 Q. Okay. Let's turn back to the 11:24:18
6 complaint on paragraph 345. 11:24:20

7 A. Just bear with me. The 11:24:32
8 complaint. 345. Oh, I opened right to it. 11:24:34

9 Q. Do you see it begins 11:24:39
10 "February 2, 2016 Chrysler issued a press 11:24:41
11 release"? Do you see that? 11:24:44

12 A. Yes. 11:24:45

13 Q. And then further down in the 11:24:45
14 paragraph the complaint alleges that this 11:24:48
15 press release stated that (as read): 11:24:52

16 FCA diesel vehicles do not have 11:24:54
17 a mechanism to either detect that they 11:24:55
18 are undergoing a bench test in a 11:24:57
19 laboratory or to activate a function 11:24:59
20 to operate emission controls only 11:25:00
21 under laboratory conditions. In other 11:25:02
22 words, although emission levels vary 11:25:04
23 depending on driving conditions, the 11:25:06
24 emission control system of the FCA 11:25:08
25 vehicles operate in the same way 11:25:09

1 ZACHARY NYE, Ph.D.

2 under the same conditions whether 11:25:11

3 the vehicle is in a laboratory or on 11:25:13

4 the road. 11:25:14

5 Do you see that? 11:25:15

6 A. Yes. 11:25:16

7 Q. And now if we turn to 11:25:16

8 exhibit 14B of your report, page 6. 11:25:22

9 A. Okay. 11:25:45

10 Q. Do you see the date of that 11:25:45

11 alleged misstatement, February 2, 2016? 11:25:48

12 A. Mm-hmm. 11:25:51

13 Q. And do you agree that your 11:25:52

14 regression analysis shows that there was no 11:25:54

15 statistically significant impact on FCA's 11:25:56

16 stock on the date of that alleged misstatement 11:25:58

17 or the surrounding dates? 11:26:01

18 A. Well, the surrounding dates 11:26:02

19 there are significant price reactions, and I 11:26:05

20 don't at the moment know the timing of this -- 11:26:09

21 oh, no, I'm looking at the wrong date. It's 11:26:15

22 February 2, right? 11:26:17

23 Q. February 2, 2016. Yes. 11:26:18

24 A. Okay. I was looking at the 11:26:20

25 next date. 11:26:21

1 ZACHARY NYE, Ph.D.

2 February 2. No, yeah, 11:26:22

3 there's no significant price reactions on 11:26:26

4 February 1, 2 or 3, 2016. 11:26:30

5 Q. And did you review any press or 11:26:33

6 analyst coverage of this press release by FCA? 11:26:36

7 A. I may have. I can't recall any 11:26:39

8 specifically at the moment. 11:26:43

9 Q. But you didn't include it as 11:26:44

10 part of your event study? 11:26:46

11 A. No, I did not. 11:26:47

12 Q. Let's turn to paragraph 361 of 11:26:48

13 the complaint. 11:26:54

14 A. Okay. 11:27:01

15 Q. It begins, "On September 22, 11:27:01

16 2016." Do you see that? 11:27:04

17 A. I do. 11:27:06

18 Q. If you'll look at the top of 11:27:06

19 the next page on that date the complaint 11:27:09

20 alleges that (as read): 11:27:12

21 A Chrysler spokesman stated 11:27:14

22 FCA US does not use defeat devices and 11:27:17

23 that it was working closely with the 11:27:19

24 EPA and CARB to ensure that its 11:27:21

25 vehicles were compliant -- to ensure 11:27:23

1 ZACHARY NYE, Ph.D.

2 its vehicles are compliant with all 11:27:25

3 applicable requirements. 11:27:26

4 Do you see that? 11:27:28

5 A. Yes. 11:27:29

6 Q. And turning back again to 11:27:29

7 exhibit 14B of your report. This is on 11:27:33

8 page 9. 11:27:39

9 A. Okay. 11:27:40

10 Q. Do you see that date, 11:27:40

11 September 22, 2016? 11:27:42

12 A. I do. 11:27:47

13 Q. And do you agree that there's 11:27:47

14 no statistically significant impact on FCA's 11:27:50

15 stock on that date of the alleged misstatement 11:27:53

16 in the complaint or the surrounding dates? 11:27:55

17 A. I do. 11:27:57

18 Q. Let's turn to exhibit 15 of 11:27:57

19 your report. 11:28:08

20 A. Okay. 11:28:10

21 Q. You testified earlier that you 11:28:11

22 included alleged disclosure events on -- in 11:28:22

23 your event study that are listed in the fourth 11:28:27

24 amended complaint, is that right? 11:28:29

25 A. That's correct. 11:28:30

1 ZACHARY NYE, Ph.D.

2 Q. So let's take a look at the 11:28:32
3 event date July 26, 2015. You title it, 11:28:35
4 "NHTSA fined FCA \$105 million for violations 11:28:39
5 in 23 recalls." 11:28:44

6 Do you see that? 11:28:44

7 A. Yes. 11:28:45

8 Q. And according to this chart you 11:28:45
9 found a statistically significant impact at 11:28:47
10 the 92.12 percent confidence level, is that 11:28:51
11 right? 11:28:54

12 A. That's correct. 11:28:54

13 Q. How did you determine what 11:28:55
14 confidence level to use for statistical 11:28:56
15 significance in this report? 11:28:59

16 A. I have routinely reported a 11:29:01
17 statistical significance in reports in 11:29:07
18 securities litigation, event studies in 11:29:10
19 general, at the 90 percent and the 95 percent 11:29:12
20 level. 11:29:14

21 Again, all it means is that a 11:29:17
22 return is particularly extreme in absolute 11:29:19
23 magnitude such that you should only expect to 11:29:25
24 see it either 5 or 10 percent of the time, 11:29:27
25 depending on the confidence level used. 11:29:28

1 ZACHARY NYE, Ph.D.

2 Incremental new information, obviously bad, 12:05:35

3 caused the stock price to go down. 12:05:40

4 Q. Let's turn to page 177 of this 12:05:42

5 exhibit. 12:05:45

6 A. Okay. 12:05:53

7 Q. And this is your analysis of 12:05:54

8 the impact day of May 23, 2017, when the DoJ 12:05:58

9 on behalf of the EPA filed a lawsuit, is that 12:06:04

10 right? 12:06:06

11 A. Correct. 12:06:06

12 Q. And so you mentioned the notice 12:06:07

13 of violation from the EPA, and if you look on 12:06:09

14 this page you'll see that in its press release 12:06:12

15 the Department of Justice writes that its 12:06:15

16 allegations are consistent with those set 12:06:18

17 forth in notice of violation that EPA issued 12:06:19

18 to FCA US LLC and FCA NV on January 12, 2017. 12:06:22

19 Do you see that? 12:06:28

20 A. Yes. 12:06:28

21 Q. So if the allegations are not 12:06:28

22 new, wouldn't we expect to -- 12:06:32

23 MR. LEVY: Withdrawn. 12:06:35

24 BY MR. LEVY: 12:06:36

25 Q. If the allegations are not new, 12:06:36

1 ZACHARY NYE, Ph.D.

2 why would we expect to see a stock price 12:06:38

3 decrease that day? 12:06:40

4 A. I think it's clear from the 12:06:41

5 coverage of the analysts. I mean, it is 12:06:43

6 incremental new information disclosed on 12:06:45

7 May 23rd. I believe -- I should check. My 12:06:49

8 understanding is, I believe in January they 12:06:52

9 had not accused it of having, quote-unquote, 12:07:02

10 cheat or defeat devices, but now they are 12:07:08

11 alleging that, and it was an incremental 12:07:16

12 difference. 12:07:19

13 Q. I can represent to you that the 12:07:19

14 NOV stated that FCA vehicles may contain 12:07:23

15 defeat devices. 12:07:27

16 A. Yeah, but analysts -- let's go 12:07:28

17 to that date. So it's January 12, 2017. 12:07:31

18 (Pause.) 12:07:48

19 It's a long one. There's a lot 12:07:49

20 of analyst reports on that day. (Pause.) 12:07:55

21 I think this is pervasive. 12:08:34

22 They're all the analyst reports, but like the 12:08:39

23 Commerzbank analyst report discussed on page 12:08:41

24 128 of my exhibit 15, it describes the EPA 12:08:44

25 issued a notice of violation. It's the second 12:08:57

1 ZACHARY NYE, Ph.D.

2 paragraph of the block quote. It starts "What 12:09:00
3 happened," question mark. And they describe 12:09:02
4 the EPA issued a notice of violation. And 12:09:05
5 they say (as read): 12:09:11

6 While the EPA issued a 12:09:11
7 violation notice of the Clean Air Act, 12:09:13
8 it did not yet call it a defeat 12:09:15
9 device. FCA has to prove now that it 12:09:19
10 is not VW-like software. Cynthia 12:09:21
11 Giles, EPA's enforcement chief, stated 12:09:27
12 that: Our meetings with Fiat Chrysler 12:09:29
13 to date have not produced a viable 12:09:31
14 explanation for the software. 12:09:33

15 FCA denies wrongdoing. 12:09:35

16 So that was a big difference, 12:09:38
17 is that the market considered this to be not a 12:09:40
18 full accusation of using defeat devices, but 12:09:43
19 there was a failure to notify the EPA about 12:09:46
20 the eight auxiliary emission control devices, 12:09:53
21 but had not formally dubbed them or accused 12:09:58
22 them of being, you know, cheat or defeat 12:10:01
23 devices. 12:10:03

24 And if they had -- that was a 12:10:03
25 big problem for VW, because they effective -- 12:10:05

1 ZACHARY NYE, Ph.D.

2 they did admit that they had those problems 12:10:08
3 and that caused the stock price to tank and 12:10:10
4 caused them to have massive fines and recall 12:10:14
5 costs. 12:10:17

6 And so the analysts at this 12:10:17
7 time were drawing a distinction, whereas in 12:10:19
8 May there was a more formal -- there was an 12:10:21
9 accusation of use of the eight AECDs, 12:10:25
10 constituted defeat devices, and that this was 12:10:31
11 a very serious regulatory infraction by Fiat 12:10:33
12 Chrysler that would be pursued by the 12:10:41
13 Department of Justice. 12:10:43

14 Q. Let's turn to the complaint, 12:10:45
15 paragraph 364. 12:10:47

16 A. Complaint. Okay. I'm there. 12:10:50

17 Q. And it begins (as read): 12:11:09

18 On January 12, 2017 the EPA and 12:11:10
19 CARB each issued a notice of 12:11:13
20 violation. 12:11:14

21 Do you see that? 12:11:15

22 A. I do. 12:11:16

23 Q. And then at the very end 12:11:16
24 of that paragraph, in the penultimate 12:11:19
25 sentence it states, or the complaint alleges 12:11:23

1 ZACHARY NYE, Ph.D.

2 that (as read):

12:11:26

3 The EPA states to date, despite
4 having the opportunity to do so, FCA
5 has failed to establish that these are
6 not defeat devices.

12:11:26

12:11:28

12:11:31

12:11:32

7 Do you see that?

12:11:33

8 A. I do.

12:11:34

9 Q. So in January 12, 2017 there's
10 been a disclosure to the market about the
11 possibility of FCA vehicles containing defeat
12 devices, is that right?

12:11:34

12:11:39

12:11:42

12:11:44

13 A. Yeah, but there's degrees to
14 the thing, right? This is not the same thing
15 as -- this is saying that they have failed to
16 establish that these are not defeat devices,
17 and the analysts clearly are reacting, saying,
18 oh, they haven't accused them of using defeat
19 devices.

12:11:46

12:11:49

12:11:51

12:11:53

12:11:56

12:11:58

12:12:01

20 Later on, when they are
21 actively accused of using defeat devices, the
22 market reacts negatively and comments that
23 they are accusing them now of using defeat
24 devices.

12:12:01

12:12:02

12:12:05

12:12:08

12:12:10

25 So there's a progression. It's

12:12:10

1 ZACHARY NYE, Ph.D.

2 not like a binary switch: I've disclosed all 12:12:12
3 the risks, therefore nothing else could 12:12:15
4 possibly happen. 12:12:17

5 No. There's a progression. 12:12:18

6 That's a spectrum of negative probabilities 12:12:19
7 that can occur and that's what's evolving over 12:12:21
8 time, is that we're seeing the information set 12:12:24
9 grow to cover an increasing chance of a 12:12:26
10 negative outcome in a very -- a very negative 12:12:29
11 outcome in terms of dollars concerned, and 12:12:34
12 that causes the stock price to react 12:12:35
13 negatively, as it should, and it did, and it's 12:12:37
14 totally consistent with market efficiency. 12:12:42

15 Q. Have you reviewed the DOJ's EPA 12:12:44
16 complaint from May 23? 12:12:47

17 A. I don't recall reading it. I 12:12:51
18 may have. 12:12:54

19 Q. What's your basis that that 12:12:54
20 complaint contained additional allegations not 12:12:57
21 contained in the NOV's? 12:12:59

22 A. The reactions by the market. 12:13:02

23 Q. Is it possible that the market 12:13:08
24 was reacting to the fact that the Department 12:13:09
25 of Justice filed a lawsuit? 12:13:13

1 ZACHARY NYE, Ph.D.

2 A. Yes.

12:15:45

3 Q. Do you expect to see alleged
4 corrective disclosures in this section?

12:15:45

12:15:48

5 A. Yes.

12:15:51

6 Q. Did you include all of the
7 alleged disclosures in this section in your
8 report?

12:15:51

12:15:53

12:15:56

9 A. I believe so.

12:15:56

10 Q. Let's turn to paragraph 341.

12:15:57

11 A. 341. Okay.

12:16:08

12 Q. It begins on December 9, 2015.

12:16:13

13 Do you see that?

12:16:15

14 A. I do.

12:16:18

15 Q. It states (as read):

12:16:19

16 On December 9, 2015, after the
17 close of trading, it was announced
18 that NHTSA had issued an amendment to
19 its July 24, 2015 consent order with
20 Chrysler.

12:16:22

12:16:24

12:16:25

12:16:27

12:16:34

21 A. Okay.

12:16:35

22 Q. And looking at the end of the
23 paragraph, it states (as read):

12:16:35

12:16:36

24 The amendment required Chrysler
25 to pay \$70 million in additional civil

12:16:39

12:16:41

1 ZACHARY NYE, Ph.D.

2 penalties.

12:16:43

3 A. Okay.

12:16:46

4 Q. Did you examine this alleged
5 disclosure in your -- in your event study?

12:16:46

12:16:49

6 A. I'm familiar with this date.

12:16:53

7 It's not in the event study. It's -- because

12:16:58

8 I think this is not -- this is kind of an

12:17:03

9 addendum to the -- to the July consent order,

12:17:05

10 so it's adding a little bit in extra costs.

12:17:09

11 But this isn't the reason why

12:17:11

12 the markets reacted so negatively on July 26.

12:17:13

13 It was because more of the recall -- or the

12:17:17

14 repurchase requirements that could be, you

12:17:21

15 know, billions of dollars. So that was the

12:17:24

16 main ramifications of the consent order, and

12:17:26

17 that the heightened \$70 million fine, you

12:17:28

18 know, for a company of Chrysler's size, is not

12:17:34

19 particularly large.

12:17:36

20 Q. The initial consent order had a

12:17:38

21 \$105 million fine and this has a \$70 million

12:17:40

22 fine. It's your testimony that that's not

12:17:44

23 material?

12:17:46

24 A. I think I just answered that.

12:17:46

25 I mean, it's the multibillion-dollar potential

12:17:48

1 ZACHARY NYE, Ph.D.

2 liability for product repurchases that is the 12:17:50

3 concern of the market on July 26, 2015. 12:17:55

4 Q. So it's your testimony that 12:17:59

5 this second consent order didn't add any new 12:18:04

6 incremental material information? 12:18:07

7 A. It does, and it may -- but it's 12:18:11

8 not -- it's not going to have a huge impact to 12:18:14

9 the value of the firm, just on its face. 12:18:16

10 Given that it's a continuation of the 12:18:19

11 addendum -- the consent order in July. 12:18:22

12 Q. Let's turn to exhibit 14B of 12:18:26

13 your report. 12:18:29

14 A. 14B, okay. I am there. Okay. 12:18:31

15 Q. And if we look over at, it's on 12:18:49

16 page 5, the date of this alleged disclosure, 12:18:53

17 December 9 and 10. Do you see that on the 12:18:56

18 bottom? 12:18:58

19 A. Yes. 12:18:58

20 Q. And do you agree that there was 12:18:58

21 no statistically significant impact on FCA's 12:19:01

22 stock on those dates? 12:19:04

23 A. Yeah, and I don't know if any 12:19:05

24 other -- I can't recall right now as I sit 12:19:08

25 here today whether there was other 12:19:12

1 ZACHARY NYE, Ph.D.

2 company-specific information disclosed on 12:19:13

3 these days, but the insignificant price 12:19:15

4 reactions to me are totally consistent with 12:19:18

5 market efficiency in this case. Based on what 12:19:20

6 I just said. This is -- the incremental fine 12:19:22

7 is not very large and the real impact was felt 12:19:26

8 in January when the original consent order was 12:19:29

9 filed. Not January. July. 12:19:34

10 Q. Will you turn to page 115 of 12:19:55

11 the complaint. 12:19:57

12 A. Page 115. I am there. 12:20:01

13 Q. And do you see it's titled "The 12:20:07

14 Truth About Chrysler Emissions Violations 12:20:11

15 Begins to Emerge"? 12:20:14

16 A. I see that. 12:20:15

17 Q. Did you include all of the 12:20:16

18 alleged disclosures in this section in -- in 12:20:20

19 your event study? 12:20:24

20 A. I believe so. 12:20:25

21 Q. Let's look at that first 12:20:25

22 paragraph under this section, paragraph 355. 12:20:30

23 Do you see that? 12:20:35

24 A. 355, okay. 12:20:36

25 Q. It states (as read): 12:20:39

1 ZACHARY NYE, Ph.D.

2 On May 19, 2016, Chrysler 12:20:42
3 cancelled a meeting with German 12:20:45
4 Transport Minister Alexander Dobrindt 12:20:46
5 to discuss the national investigative 12:20:49
6 commission on emissions, saying that 12:20:52
7 Germany authorities have no say over 12:20:54
8 it. Reacting to this, Dobrindt stated 12:20:55
9 that: This uncooperative conduct by 12:20:57
10 Fiat is totally incomprehensible ... 12:20:59
11 There are concrete allegations at 12:21:00
12 issue. It would be appropriate if 12:21:02
13 Fiat commented to the investigative 12:21:04
14 committee on this. 12:21:05

15 Do you see that paragraph? 12:21:05

16 A. Yes. 12:21:06

17 Q. Would you consider this a 12:21:07
18 corrective disclosure? 12:21:09

19 A. I'm not -- I'm not the 12:21:10
20 plaintiffs' counsel or lead plaintiff or a 12:21:12
21 lawyer. But it's in this section. I don't 12:21:16
22 know whether they considered it a corrective 12:21:18
23 disclosure. I believe they don't consider 12:21:20
24 that necessarily a corrective disclosure, at 12:21:21
25 least for loss causation purposes. 12:21:23

1 ZACHARY NYE, Ph.D.

2 Q. What's your basis for that? 12:21:25

3 A. Normally my experience with 12:21:26

4 these types of cases is that when you see a 12:21:29

5 discussion of a price decline in a section 12:21:32

6 like this, those end up being the dates that 12:21:35

7 are "corrective." 12:21:38

8 Quote-unquote, "corrective." 12:21:42

9 Q. Could we turn to exhibit 14B of 12:21:53

10 your report. 12:21:56

11 A. Okay. I am there. 12:21:59

12 Q. On page 7 of the report do you 12:22:11

13 find that date, May 19, 2016? 12:22:25

14 A. Yes. 12:22:27

15 Q. And your regression analysis 12:22:27

16 found that there was no statistically 12:22:29

17 significant impact on FCA's stock that day, 12:22:30

18 right? 12:22:33

19 A. Yeah, it's a negative -- it's a 12:22:34

20 fairly large negative residual, minus 2.5 12:22:36

21 percent. Significant at the 83 percent, I 12:22:40

22 suppose, confidence level. But it's, yeah, 12:22:44

23 not significant like at conventional levels. 12:22:46

24 Q. So there was no statistically 12:22:50

25 significant impact on FCA's stock price that 12:22:52

1 ZACHARY NYE, Ph.D.

2 day, correct?

12:22:54

3 A. No -- it was not significant at
4 the 90-percent-or-greater level of confidence.

12:22:55

12:22:58

5 Q. If we look at paragraph 360 of
6 the complaint.

12:23:05

12:23:07

7 A. Okay.

12:23:09

8 Q. It begins (as read):

12:23:09

9 On September 1st, 2016, Reuters

12:23:12

10 reported that the German government

12:23:15

11 had formally accused Chrysler of using

12:23:17

12 a defeat device to switch off

12:23:20

13 emissions.

14 Do you see that?

12:23:22

15 A. I do.

12:23:23

16 Q. Did you include that alleged
17 disclosure in your analysis?

12:23:23

12:23:25

18 A. I don't -- no, I did not.

12:23:27

19 Q. Did this provide any new
20 incremental material that would be of interest
21 to the market, in your view?

12:23:30

12:23:40

12:23:41

22 A. I don't know whether -- I don't
23 have -- I haven't analyzed this one. I can't
24 recall analyzing this one in particular
25 detail.

12:23:43

12:23:58

12:24:01

12:24:04

1 ZACHARY NYE, Ph.D.

2 Again, the corrective 12:24:04
3 disclosures are not mine to determine so I'm 12:24:06
4 operating on guidance from counsel. So my 12:24:09
5 understanding is that this is not considered a 12:24:12
6 corrective disclosure. 12:24:14

7 Q. If we turn to exhibit 14B of 12:24:16
8 your report, page 9, where that date appears. 12:24:23

9 A. Okay. 12:24:32

10 Q. Do you agree that there was no 12:24:33
11 statistically significant impact on FCA's 12:24:36
12 stock that day or the next day? 12:24:38

13 A. There is no statistically 12:24:41
14 significant decline -- on September 2 again is 12:24:43
15 a similar thing. It's significant. If the 12:24:53
16 impact date -- which I don't know at the 12:24:57
17 moment whether the impact date is September 2. 12:24:59
18 If it is, that is a negative company-specific 12:25:03
19 return of negative 2.41 percent, which is 12:25:08
20 significant at the 80 percent confidence 12:25:13
21 level, so it's, you know, fairly large. You 12:25:14
22 should only expect to see it, at most, 20 12:25:17
23 percent of the time. But it is not 12:25:20
24 significant at conventional, say, 90 percent 12:25:22
25 or greater confidence levels. 12:25:26

1 ZACHARY NYE, Ph.D.

2 Q. Turning to paragraph 363 -- 12:25:28

3 A. 363. Okay. 12:25:37

4 Q. -- of the complaint. It states 12:25:41

5 (as read): 12:25:42

6 On October 17, 2016 Chrysler's 12:25:42

7 chief technical officer Harald Wester 12:25:45

8 angered members of the European 12:25:48

9 Parliament at a hearing in Brussels 12:25:49

10 when he questioned the methods used to 12:25:51

11 the European governments reporting 12:25:53

12 that Chrysler's diesel cars were 12:25:54

13 emitting far beyond EU limits when 12:25:56

14 driving on the road. 12:25:59

15 Do you see that? 12:26:00

16 A. Yes. 12:26:00

17 Q. Do you have a view on whether 12:26:00

18 the allegations in this paragraph are adding 12:26:07

19 new incremental material information to the 12:26:09

20 market? 12:26:11

21 A. I don't -- at the moment I 12:26:12

22 don't know whether this added incremental 12:26:16

23 information, as I sit here right now. 12:26:18

24 Q. If we go to exhibit 14B to your 12:26:21

25 report. 12:26:27

1 ZACHARY NYE, Ph.D.

2 A. Okay.

12:26:38

3 Q. It's on page 9 that date,

12:26:40

4 October 17, 2016.

12:26:43

5 A. Mm-hmm. I'm there.

12:26:45

6 Q. Do you agree that on that day

12:26:47

7 and the next day there was no statistically

12:26:50

8 significant effect on FCA's stock price?

12:26:52

9 A. I agree.

12:26:55

10 Q. Let's turn to paragraph 372 of

12:26:57

11 the complaint.

12:27:04

12 A. 372. Okay.

12:27:09

13 Q. And the complaint alleges that

12:27:10

14 (as read):

15 On May 31, 2017 Germany's

12:27:14

16 transportation ministry announced that

12:27:17

17 it had found a new defeat device in a

12:27:18

18 Chrysler car.

12:27:21

19 Do you see that?

12:27:21

20 A. Yes.

12:27:22

21 Q. Do you have a view on whether

12:27:23

22 that added any incremental information into

12:27:25

23 the market?

12:27:27

24 A. Not as I sit here today.

12:27:28

25 Q. And if we look back to exhibit

12:27:30

1 ZACHARY NYE, Ph.D.

2 14B in your report, that's on page 11.

12:27:37

3 A. Okay.

12:27:46

4 Q. Do you agree that there was no
5 statistically significant impact on FCA's
6 stock price that day?

12:27:46

12:27:51

12:27:53

7 A. I agree.

12:27:55

8 Q. And then turning to paragraph
9 373 to the complaint.

12:27:56

12:28:01

10 A. Mm-hmm, I'm there.

12:28:03

11 Q. It states that (as read):

12:28:04

12 On May 17, 2017 the European
13 Commission (EC) issued a press release
14 stating that it had decided to launch
15 an infringement procedure against
16 Italy for failing to fulfill its
17 obligations under EU vehicle
18 type-approval legislation with regard
19 to Chrysler automobiles.

12:28:06

12:28:11

12:28:12

12:28:13

12:28:15

12:28:17

12:28:19

12:28:21

20 Do you see that?

12:28:22

21 A. Yes.

12:28:23

22 Q. Do you have a view on whether
23 that added any incremental information into
24 the market?

12:28:24

12:28:26

12:28:27

25 A. Not as I sit here today.

12:28:28

1 ZACHARY NYE, Ph.D.

2 Q. And if we turn to exhibit B of 12:28:30
3 your report on page 12. 12:28:36

4 A. I am there. 12:28:52

5 Q. Do you agree that on that 12:28:55
6 date, on the day of the alleged disclosure, 12:28:58
7 May 17, 2017, and the next day, there was no 12:28:59
8 statistically significant impact on FCA's 12:29:02
9 stock price? 12:29:04

10 A. I agree. 12:29:05

11 MR. LEVY: I think we can break 12:29:09
12 for lunch. 12:29:10

13 MR. LIEBERMAN: Great. 12:29:10

14 THE VIDEOGRAPHER: The time is 12:29:11
15 approximately 12:29. We're going off 12:29:14
16 the record. 12:29:17

17 ---

18 (Lunch recess taken at 12:29 p.m.) 12:29:18

19

20

21

22

23

24

25

ZACHARY NYE, PH.D. - 02/02/2018

Page 120

1 ZACHARY NYE, Ph.D.

2 A F T E R N O O N S E S S I O N

3 (Time Noted: 1:19 p.m.)

13:18:34

4 THE VIDEOGRAPHER: We're back

13:18:34

5 on the record. It's approximately

13:19:11

6 1:19. Thank you.

13:19:12

7 - - -

13:19:13

8 Z A C H A R Y N Y E, P h. D.,

9 resumed as a witness, having been

10 previously sworn by the Notary Public,

11 was examined and testified further as

12 follows:

13 CONTINUED EXAMINATION

14 BY MR. LEVY:

13:19:14

15 Q. Can you please turn to

13:19:14

16 paragraph 72 of your report.

13:19:19

17 A. Okay. I'm there.

13:19:25

18 Q. And so you're not currently

13:19:27

19 offering to calculate classified damages in

13:19:30

20 that matter -- in this matter, is that right?

13:19:33

21 A. That's correct.

13:19:36

22 Q. You're instead offering a

13:19:36

23 preliminary method of calculating damages, is

13:19:39

24 that an accurate description?

13:19:40

25 A. It's a general economic

13:19:42

1 ZACHARY NYE, Ph.D.

2 framework for quantifying per-share damages on 13:19:45
3 a classwide basis. It has -- it describes a 13:19:48
4 methodology based on an event study, or the 13:19:52
5 event study methodology that has been accepted 13:19:55
6 many, many times in federal securities 13:20:00
7 litigation. 13:20:02

8 And all I'm doing here is just 13:20:03
9 describing how it is done, you know, in a 13:20:05
10 general sense, and that I believe it's 13:20:09
11 applicable to this case. 13:20:12

12 Q. And so you are not actually 13:20:14
13 offering a damages model now? 13:20:16

14 A. No, I haven't quantified 13:20:18
15 per-share damages or examined loss causation 13:20:23
16 in this matter. 13:20:25

17 Q. This is just kind of a 13:20:26
18 high-level general sense of what such a model 13:20:28
19 might look like? 13:20:30

20 A. It's a -- it's describing the 13:20:31
21 general economic framework for quantifying 13:20:33
22 per-share damages on a classwide basis. 13:20:36

23 Q. Okay. In paragraph 74 you 13:20:39
24 write that (as read): 13:20:42

25 Price inflation may be measured 13:20:44

ZACHARY NYE, PH.D. - 02/02/2018

Page 152

1 C E R T I F I C A T E

2 STATE OF NEW YORK)

3 COUNTY OF NEW YORK)

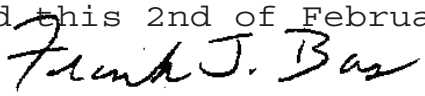
4 I, FRANK J. BAS, a Registered
5 Professional Reporter, Certified Realtime
6 Reporter and Notary Public within and for the
7 State of New York, do hereby certify:

8 That ZACHARY NYE, Ph.D., the witness
9 whose testimony is hereinbefore set forth, was
10 duly sworn by me and that such testimony given
11 by the witness was taken down stenographically
12 by me and then transcribed.

13 I further certify that I am not
14 related by blood or marriage, to any of the
15 parties in this matter and that I am in no way
16 interested in the outcome of this matter.

17 That any copy of this transcript
18 obtained from a source other than the court
19 reporting firm, including from co-counsel, is
20 uncertified and may not be used at trial.

21 IN WITNESS WHEREOF, I have hereunto
22 set my hand this 2nd of February, 2018.

23 
24 FRANK J. BAS, RPR CRR
25 STATE OF NEW YORK
Notary Public No. 01BA6260327
(My commission expires 4/30/2020)